THE

TRINITY CHURCH TITLE.

REPORT

OF THE

COMMISSIONERS OF THE LAND OFFICE

MADE TO THE

HOUSE OF ASSEMBLY

MAY 12, 1836.

NEW-YORK:
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NOTE.

In 1835, there appeared in the New York Gazette, a publication under the signature of *Vindex*, upon the subject of the Trinity Church title, with a Memorial to the Legislature founded upon the views of the writer. The House of Assembly referred the matter to the Commissioners of the Land Office, who made the Report that is contained in the following pages. *Vindex's* argument appears to have been adopted by Counsel, in a late case before the Assistant Vice Chancellor, of the first Circuit. (See New York Evening Post, of Friday, Feb. 13th, 1846.) The reminiscence of this Report, and of the principles it contains, and the conclusions arrived at in it, may quiet some present disposition to revive the same questions.

The signers of this document were, the Attorney General, the Secretary of State, the Comptroller, the Treasurer and the Surveyor General of the State, *ex officio* Commissioners of the Land Office. The Hon. Greene C. Bronson was Attorney General at the times of the reference and the hearing of the parties, but being elevated to the bench of the Supreme Court, on 6th January 1836, the proceeding was continued and concluded in the time of his successor, who acquiesced in the Report, the argument being in paper.

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SEYMOUR DURST

AVERY
DURST

STATE OF NEW-YORK.

No. 321.

IN ASSEMBLY,

May 12, 1836.

REPORT

Of the Commissioners of the Land-Office, on the memorial of Wm. Cochran, John William Fay, and sundry other inhabitants of the city of New-York, in relation to Trinity Church.

TO THE ASSEMBLY.

The Commissioners of the Land-Office, to whom was referred the memorial of William Cochran, John William Fay, and sundry other inhabitants of the city of New-York, in respect to Trinity Church in that city, have the honor to present the following

REPORT:

The memorial was referred to the Commissioners on the 30th March, 1835, and the report has been delayed to this time by the desire of the Commissioners to afford to the parties concerned, an opportunity to be heard, if they should so desire, and by other circumstances which it was not in their power to control. A day was appointed for the hearing during the recess of the Legislature, and the proper notices were given, as well to the memorialists as to Trinity Church.

The latter appeared by counsel, from whom a paper was subsequently received, stating the legal grounds on which the church claims to hold its corporate property.

The memorialists suggest that there is in the city of New-York, an ecclesiastical body called "The Rector, Church-Wardens and Vestrymen of Trinity Church in the city of New-York;" that said "church is in possession, and receives the profits, of a very extended landed estate;" that the revenue of said church was formerly limited by the Legislature of this State, "to the sum of twelve hundred pounds per annum of the then currency," "which would amount to three thousand dollars of the present currency;" but that its present revenue "very much exceeds the sum to which it is limited" by law, and that the immense wealth of Trinity Church gives it "a preponderating influence, not only in the affairs of the Protestant Episcopal Church in this State, but in those of the United States." That in the opinion of the memorialists, the possession of so great wealth by this society, is inconsistent with the spirit of the government and Constitution of this State; and that, in permitting it so to be held, the government give a preference to "a particular religious denomination." The memorialists, therefore, pray that "the whole of said real estate, or so much thereof as creates the excess of revenue, beyond the amount limited, may be taken to and for the people of this State; and that the Legislature will take such proceedings in the premises as may seem proper."

On the sixth of May, 1697, William III. King of England, granted a charter of incorporation to a rector and certain inhabitants of the city of New-York. This charter recites, amongst other things, that certain inhabitants of said city had, by their petition, represented that a church had been built within said city, at the charge of the governor of the then province of

New-York, and several other inhabitants of said city, and prayed that said "church might be made parochial and incorporate into one body politic, in fact and in name;" and that a yearly maintonance might be appropriated unto said church, and also that his majesty would make a royal grant of a piece of land near adjoining to said church, for the use of said church and corporation; wherefore in consideration of the premises, and of the great charge which must accrue in finishing said church, &c., and in erecting and providing a parsonage house, &c., his majesty granted and declared that said church, "situate in and near the street called Broadway," in the city of New-York, "and the ground thereunto adjoining, inclosed and used for a cemetery or church-yard," should be the parish church and church-yard of the parish of Trinity Church, within said city, and dedicated to the service of God, and applied thereunto for the use of those who might from time to time be inhabitants of the city of New-York, in communion of said Protestant Church of England, as then established by the law, and to no other use or purpose whatever; and that there should be a rector, and a perpetual succession of rectors in said parish, the Bishop of London being thereby constituted the first rector. The charter, also, declared and provided, that said Bishop and his successors, rectors of said parish, and the inhabitants of said city, in communion as aforesaid, should be a body corporate and politic, in fact and in name, by the name of "*The Rector and Inhabitants of our said city of New-York, in communion of our Protestant church of England, as now established by our laws*," with perpetual succession, and power to have, acquire, and purchase lands, goods and chattels, and to use, lease, and dispose of the same as other liege people, "or any corporation," within the realm of England or said province, might lawfully do, "not exceeding the yearly value of five thousand pounds."

It was also declared by said charter, "that the said church, cemetery, or church-yard," should "be the sole and only parish church and church-yard of" said city of New-York; and a certain yearly maintenance of one hundred pounds, directed by an act* of the general assembly of said province, was in and by said charter granted to said rector and his successors forever, to be levied and collected according to said act; the said premises, rights, &c., to be holden by said corporation in free and common soccage, at the yearly rent of one pepper corn, if demanded.

This is an epitome, so far as is deemed to be material, of the original charter of Trinity Church, in the city of New-York.

An act of the Legislature of the province of New-York, passed the 27th of June, 1704,† recites that Trinity Church had been erected by the voluntary contributions of sundry inhabitants of the city of New-York, who had also purchased and procured, and held and enjoyed "the said church, with the cemetery or burying place, and a certain tract of land belonging thereto." The act then proceeds to declare that the rector of said church, and the inhabitants of said city, in communion of the church of England, as by law established, and their successors, should possess corporate powers, and as such corporation, might "hold, use, exercise and enjoy," the said church, burying place and land thereto belonging, by whatsoever name or names the same were purchased and had, and "in as firm and ample a manner, in the law, as if the said rector and inhabitants had been legally incorporated" *before* the purchasing, taking, receiving and holding the same.

It is probable that the title of the corporation to

* This act was passed 24th March, 1693. Livingston and Smith's edition of the Provincial Laws, p. 18.

† Livingston and Smith's edition of the Provincial Laws, p. 60.

the church, burying place and land adjacent, had been called in question before the passing of this act, and that a principal object of the provision which has been recited, was to confirm that title, and render it incontestable. The first step in the origin and progress of Trinity Church, appears to have been the erection of the church by voluntary contribution, and the acquisition of a title of some description to the land on which the church was erected, and the land adjacent thereto. In whom this title was vested, does not appear; but by the sixth section of the act last referred to, it appears that the title had been conveyed by the corporation of the city of New-York, "*for the use* of Trinity Church." The church, however, had not then been incorporated, and was therefore incapable of taking a legal title. The charter of incorporation was subsequent to this grant, and to the erection of the church; but this, although it gave to the body thereby created, a capacity to acquire and receive title to the church property, did not in fact, invest it with that title. That could only be effected by a subsequent legal conveyance to the corporation, or in case the title had previously been transferred in an informal manner, for the benefit of those who were thus incorporated, the Legislature might correct such defects and informalities, and thus vest the title according to what had been the real intention of all parties. This is what the act of 27th June, 1704, was intended to effectuate, and hence it provided that the corporation should have and hold said church, burying place and land, by whatsoever name the same were purchased or granted, in as ample a manner as if said corporation had been created *before* such purchase or grant had been made.

The act of 27th June, 1704, also declares that said corporation may acquire and purchase lands, tenements and hereditaments, goods and chattels, and lease and improve such lands, &c., in amount, how-

ever, "not exceeding five hundred pounds yearly rent or income."

This corporation was, therefore, not only originally created by the King's charter, but it was subsequently declared by the Provincial Legislature, to be a corporation and to possess such general powers as the original charter had assumed to confer upon it.

On the twenty-third day of November, 1705, Lord Cornbury, Governor of the Province of New-York, in the name and as the act and deed of Queen Anne, made a lease by which certain pieces of land, formerly called the Duke's farm and the King's farm, and then known by the name of the Queen's farm, as the same were then in the occupation of and enjoyed by George Ryerse, or by any former tenant, situate in the city of New-York, "and bounded on the east partly by the Broadway, partly by the common, and partly by the swamp; and on the west by Hudson's river; also, all that one piece" of land "on the south side of the church-yard of Trinity Church," called the Queen's garden, were granted and confirmed to said corporation, to the use "of the said rector and inhabitants of the said city of New-York, in communion of the Church of England, as by law established, and their successors *forever*, to be holden" in free and common soccage, paying the yearly rent of three shillings.

The corporation of Trinity Church is understood to possess and claim title to several pieces of land, in the city of New-York.

1. The land on which the church was erected, and the church-yard thereto adjoining, &c. These lands seem, in part, to have been purchased by voluntary contributions, and the residue granted by the city of New-York, for the use of Trinity Church, before the corporation was created. The title of the corporation to these lands, was confirmed by the act of 27th June, 1704.

2. The Duke's farm, the King's farm, and Queen's farm; all meaning the same piece of land.

3. The King's or Queen's garden, as it was called, on the south side of the church-yard.

The two last pieces were conveyed to the corporation by the lease of 1705, of which an abstract has been given.

Upon these sources of title, together with an uninterrupted possession under them, the corporation of Trinity Church relies, to establish its present right to the property in question.

It has been suggested, however, that the lease executed by Governor Cornbury, in 1705, being in perpetuity, was, on that ground, null and void, and it is true that an act of the Provincial Legislature of 12th May, 1699,* declares that it shall not be in the power of any Governor of the Province of New-York, "to grant or demise for any longer than his own time in the government, any of the lands hereinafter mentioned, that is to say: Nutten Island, *the King's farm*, *the King's garden*, the swamp, and fresh water," "being the demesne of his Majesty's fort at New-York, and for the benefit and accommodation of his Majesty's governors and commanders in chief for the time being."

But this act was repealed by an act, passed on the the 27th of November, 1702.†

It is true, that the repealing act was annulled by Queen Anne, the 26th of June, 1708, and the restraining act of 12th May, 1699, was at the same time, confirmed by her Majesty.

But, although the power of the crown, to annul acts of the Provincial Legislature, was indisputable, and they were required to be transmitted to the Sovereign of Great Britain "for approbation or disallow-

* Livingston and Smith's edition of the Provincial Laws, p. 33, ch. 79, § 3.

† Livingston and Smith's edition of the Provincial Laws, p. 52; and Bradford's edition of the Provincial laws, p. 196.

ance ;" and, if disallowed, were, "from thenceforth," void, and of none effect, yet, until so disallowed, they were, to all intents and purposes, laws. The power of the Provincial Governor to make leases of the crown lands, was therefore, unlimited in 1705, when the lease in question was made. This lease seems therefore, to have been valid and effectual in its inception, and to have been so regarded during the continuance of the Provincial government.

It appears from an entry in "Quit Rent Ledger No. 1," of the office of the Receiver General of the Province of New-York, and which is now in the Comptroller's Office, that the rent of three shillings per annum, reserved by the lease of the 23d November, 1705, was paid in full to the 25th of December, 1750.

It also appears from Quit Rent Book D., in the Comptroller's Office, that on the 20th of September, 1786, the rent for eleven years preceding the 25th December in that year, was paid to the State, and that a farther sum of two pounds two shillings, being fourteen times the amount of one year's rent, was paid by way of commutation, and in full satisfaction and discharge of said rent. This payment was made under and pursuant to the act of the first of April, 1786, which declares that such payment "shall be a good discharge of such quit rent forever."*

The lease of 1705 seems, therefore, to have been regarded as a subsisting and valid grant, not only by the Provincial government, to as late a period as 1750 when rent was paid upon it, but by the government of this State, in 1786, when the rent reserved was finally commuted and satisfied.

There is probably no room to doubt but that the corporation of Trinity Church has, by its agents and tenants, held and possessed the lands in question,

* Jones and Varick's edition of the laws, vol. 1, 250.

claiming an absolute and indefeasible estate therein, free from all rents and charges, &c., from the commutation and payment of said quit-rent, in 1786. If this is so, it would seem to be clear that if the people of this State then had a right to said lands, that right has been lost, and is barred by lapse of time. By the act of 26th February, 1788, the right of the people of this State to sue for the recovery of lands, is limited to forty years, after the right of action accrued; and the same period was continued down to the late revision of the laws of this State.* The limitation in England, and in the Province of New-York, was sixty years.

An act passed the 17th of April, 1784,† makes certain alterations in the charter, "to render it more conformable to the Constitution of the State;" and the act of 10th March, 1788,‡ authorizes the corporation to take and use the name of "*The Rector and Inhabitants of the City of New-York, in communion of the Protestant Episcopal Church, in the State of New-York,*" and confirms certain conveyances made to or by said corporation, by "any other name or names" whatever.

An act of the 14th March,§ 1806, recites that a charity school had, for a considerable number of years past, been under the care and management of the corporation of Trinity Church, and that said school had lately been endowed by said corporation. It then proceeds to incorporate the trustees of said school, and declares that they shall, in each year, render an account to the corporation of Trinity Church.

The act of 25th January, 1814,‖ changed the name of the corporation to that of "*The Rector, Church-Wardens, and Vestrymen of Trinity Church, in the City of New-York.*" This statute confirms the

* 1 R. L. p. 184, and the acts there referred to.
† Holt and Loudon's edition of the laws, 7th Session, p. 42.
‡ Ib. 11th Session, ch. lxvi. § Laws of 29th Session, p. 126.
‖ Laws of that Session, p. 5.

separation which had previously taken place between said corporation and Saint George's Chapel, and the transfer of property which had been made by the corporation of Trinity Church to that chapel. It also authorized the corporation of Trinity Church, as often as should seem expedient, "to divide the congregation or corporators belonging to the said corporation," "by setting apart, as a separate church, any of the churches or chapels that may belong to, and form a part of the said corporation."

The Legislature of this State have, therefore, repeatedly recognized the corporation of Trinity Church as a legal, valid and subsisting corporation.

It is, however, urged that the annual income of the corporation greatly exceeds the amount at which it is limited by the original charter, and by legislative enactments, binding upon said corporation. The Commissioners of the Land Office are not apprized of the amount of this income; but it is probably true that it exceeds the sum of five thousand pounds mentioned in the original charter. It is not, however, pretended that the property now owned by Trinity Church would have produced any thing like an income of five thousand pounds when it was conveyed to the corporation. The present large income arises from the great appreciation of the lands conveyed to the corporation by the lease of 1705, not as is understood, by any acquisition of property since that time. It is, however, not supposed that any forfeiture of charter or income, whatever may be the amount of such income, can follow from this rise in value of the real estate owned by the corporation. (*See* 2 *Inst.* 722.) This principle is plainly recognized in the 6th section of the act of 25th January, 1814, (3 *R. S.* 299,) which declares "that in every case where a church or religious society which has been, or may be, duly incorporated, shall have exhibited such account and inventory as is specified in the ninth [tenth] section of the act entitled, 'An act to

provide for the incorporation of religious societies,' it shall not be necessary for such church or society again to exhibit any account and inventory, *unless the said church or society subsequently to such exhibition, shall have purchased or acquired any lands, tenements, or hereditaments, within this State.*"

In conclusion, the Commissioners of the Land Office are of opinion,

1. That "*The Rector, Church-Wardens and Vestrymen of Trinity Church, in the City of New-York,*" are a valid corporation, with full power to hold the real estate which has been referred to.

2. That it has a valid, subsisting and absolute title to the lands referred to.

3. That it also is entitled to the rents and profits of said lands without any regard to the amount of income which they may yield.

Which is respectfully submitted,

S. BEARDSLEY,
JOHN A. DIX,
A. C. FLAGG,
A. KEYSER,
WILLIAM CAMPBELL.

Albany, May 12, 1836.

AVERY
CLASSICS

ADVERTISEMENT.

GEORGE SULLIVAN has published a statement respecting the title of TRINITY CHURCH to the lands in the city of New-York, called the Church Farm; and the rights of the heirs of Anneke Jans to some portion of it. Lest any one may suppose that such statement contains the facts in the case, and correct conclusions thereon, and be thereby deluded into expenditures for the prosecution of their imagined rights, it would be well to inquire what can be the motive of counsel for agitating again this matter; and what are represented to be the facts by the other side. The members of the Legislature, and all other persons who take any interest in the question, are referred to the accompanying pamphlets, being Vice-Chancellor (now Judge) Sandford's opinion, delivered on giving judgment in the suit of *Bogardus* vs. *Trinity Church*, (4th Sandford's Chancery Rep., p. 633,) and the Report of the Commissioners of the Land Office, made to the Legislature in 1836, (Assembly Documents, 1836, No. 321.) Reference is also made to the case of *Humbert* vs. *Trinity Church*, (7th Paige, 193, and upon appeal before the Court of Errors, 24th Wendell's Reports, 587.) Senator Furman in delivering his opinion in this last case (see 24th Wendell's Rep., p. 619) throws at least reasonable doubts upon the question whether the *Dominie's Hook* claimed by the heirs of Anneke Jans Bogardus, were situated anywhere upon Manhattan Island.

January 23, 1851.